

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DARRELL SEABURN MCCURDY, #1787703 §

VS. § CIVIL ACTION NO. 6:13cv363

T. D. HAMMONS, ET AL. §

ORDER OF DISMISSAL

Plaintiff Darrell Seaburn McCurdy, an inmate previously confined at the Skyview psychiatric facility of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this lawsuit pursuant to 42 U.S.C. § 1983. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Third Report and Recommendation (docket entry #47) concluding that the case should be dismissed without prejudice for want of prosecution and failure to obey an order. The Plaintiff has filed objections.

The Defendants remaining in the lawsuit are Officer McCartney, Dr. Hardy and T.D.C.J. The Plaintiff was given multiple opportunities to file an amended complaint in order to explain why he was suing them. In his most recent amended complaint (docket entry #46), a twenty-three page document, he named President Obama, the Pentagon and Zachary Casstevens as the defendants. Among other things, he alleged that they used a parapsychological form of metempsychosis, the spiritual medium and telepathy in order to communicate with him. His list of defendants on pages one and three of the complaint did not mention Officer McCartney, Dr. Hardy nor T.D.C.J. Since the Plaintiff failed to comply with multiple orders to explain why he was suing McCartney, Hardy and T.D.C.J., a recommendation was made to dismiss the lawsuit. In his objections, the Plaintiff asserted that they

were mentioned in the complaint. However, he made only a passing reference to Dr. Hardy and T.D.C.J. in paragraph seven as follows: “The other medical evidence being Dr. Hardy, T. Beard, TDCJ situation to support their exculpatory angle, by perpetrating me a paramnesia {sic}.” Despite receiving instructions to the contrary, his amended complaint did not focus on Officer McCartney, Dr. Hardy and T.D.C.J. and why he was suing them. Nonetheless, assuming *arguendo* that the remainder of the complaint was properly before the Court, it would best be described as factually frivolous encompassing claims that are “fanciful,” “fantastic,” and “delusional.” *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (citing *Neitzke v. William*, 490 U.S. 319 (1989)).

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the civil rights complaint is **DISMISSED** without prejudice for want of prosecution and failure to obey an order. Fed. R. Civ. P. 41(b). It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 4th day of November, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE